

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

RHONDA D. DAVIDSON,

Appellant.

No. 39384-1-II

UNPUBLISHED OPINION

Armstrong, J.—Rhonda Davidson appeals her Clark County convictions and sentence for two counts of delivery of a controlled substance and one count of possession of a controlled substance. She contends that the evidence was insufficient to support the school bus stop enhancements. She also argues that the trial court erred by making the enhancements consecutive. In her pro se statement of additional grounds (SAG), Davidson contends that her attorney failed to provide effective assistance, and she challenges the sufficiency of the evidence of identity. The State concedes that it did not produce sufficient evidence to establish the presence of school bus route stops. We affirm the conviction, but vacate the enhancements and remand for resentencing on the basis of the State’s concession.¹

FACTS

On September 19, 2008, and again on October 27, 2008, confidential informant Gary Lindsey made controlled buys of methamphetamine under the supervision of Vancouver Police Detective Tim Martin. In both instances, Lindsey arranged the transactions with Davidson on the

¹ A commissioner of this court considered this matter pursuant to RAP 18.14 and referred it to a panel of judges.

phone and then met her in a McDonalds parking lot. Davidson came alone the first time. On the second occasion, she had a passenger, Eugene Johnson, who handled the transaction.

After the second buy, Vancouver officers stopped Davidson's vehicle, and arrested both her and Johnson. Johnson was still in possession of the buy money. Davidson had a digital scale and a methamphetamine pipe in her purse. The State charged her with two counts of delivery and one count of possession, based on the methamphetamine residue in the pipe. The jury convicted her as charged and also found, by special verdicts, that she had delivered the controlled substances within 1,000 feet of a school bus route stop designated by a school district.

ANALYSIS

Davidson first contends that the evidence is insufficient to establish the school bus stop enhancements. The State concedes that it failed to establish all of the prerequisites of RCW 69.50.435(1)(c), and we accept that concession. It is therefore unnecessary to address Davidson's claim that the State did not prove the enhancements.

The claims in Davidson's SAG are unpersuasive. She asserts that trial counsel provided ineffective assistance because he (1) did not obtain the tapes from the security cameras at the parking lots where the transactions occurred, (2) did not contact a potential witness for the defense, (3) did not object to police reports and a warrant that had incorrect information on them, and (4) did not object to a corrections officer serving on the jury.

The claim pertaining to errors in police reports and a "warrant" appear to involve a third charge of delivery that was ultimately dismissed. Lindsey participated in a controlled buy in August 2008, and Detective Martin had incorrectly identified the dealer as Davidson in his report.

Defense counsel pointed out the error during cross examination, and Davidson may actually have benefitted from the opportunity to raise doubts about the accuracy of the officer's memory. Certainly, she cannot demonstrate prejudice.² The other allegations regarding trial counsel's performance involve matters that are outside the record, and they cannot be reviewed on direct appeal. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995); RAP 16.11(b).

Likewise without merit is Davidson's challenge to the sufficiency of the evidence of identity. Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Montgomery*, 163 Wn.2d 577, 586, 183 P.3d 267 (2008); *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Salinas*, 119 Wn.2d at 201.

The informant identified Davidson at trial. The car used in making the deliveries belonged to her. She was arrested in that car almost immediately after the second sale. And she admitted to the officers that (1) she had witnessed Johnson give the informant something that she believed to be drugs and (2) she "guess[ed]" she had made the first sale, herself. Report of Proceedings (RP) at 75, 78. That is more than enough to support the jury's determination that she was the driver of the car and participated in both deliveries.

² A defendant wishing to establish ineffective assistance of counsel must demonstrate both deficient performance and prejudice. *See State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004).

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We affirm the convictions, vacate the enhancements, and remand to the trial court to correct the sentence accordingly.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Penoyar, C.J.

Worswick, J.